

<p>DISTRICT COURT, JEFFERSON COUNTY, COLORADO</p> <p>100 Jefferson County Parkway Golden, Colorado 80401</p> <hr/> <p>STATE OF COLORADO, ex rel. KEN SALAZAR, Attorney General,</p> <p>Plaintiff,</p> <p>v.</p> <p>GENERAL STEEL DOMESTIC SALES, LLC, dba GENERAL STEEL; CAPITAL STEEL INDUSTRIES, LLC, dba CAPITAL STEEL; JEFFREY KNIGHT, Individually; KEVIN NEAL KISSIRE, Individually; BRUCE GRAHAM, Individually; JORDAN BLUM, Individually; and JEFFREY SCOTT DONELSON, Individually,</p> <p>Defendants.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>KEN SALAZAR, Attorney General</p> <p>MARIA E. BERKENKOTTER, Reg. No. 16781* First Assistant Attorney General</p> <p>JAY B. SIMONSON, Reg. No. 24077* CLAIRE M. LARGESSE, Reg. No. 18883* ANDREW P. McCALLIN, Reg. No. 20909* Assistant Attorneys General</p> <p>1525 Sherman Street, 5<sup>th</sup> Floor Denver, CO 80203 (303) 866-5079 FAX: (303) 866-4916 E-Mail: <a href="mailto:jay.simonson@state.co.us">jay.simonson@state.co.us</a></p> <p>*Counsel of Record</p>	<p>Case No.: 04-CV-0143</p> <p>Division 6 Courtroom: 5-B</p>
<p><b>AMENDED COMPLAINT</b></p>	

Plaintiff, the State of Colorado, upon relation of Ken Salazar, Attorney General for the State of Colorado, by and through the undersigned counsel, states and alleges as follows:

### INTRODUCTION

1. This is an action brought by the State of Colorado pursuant to the Colorado Consumer Protection Act, §§ 6-1-101, *et seq.*, C.R.S. (2003), (“CCPA”) to enjoin and restrain Defendants from engaging in certain deceptive trade practices, for restitution to injured consumers, for disgorgement, for statutorily mandated civil penalties, and for other relief as provided in the CCPA.

2. Ken Salazar is the duly-elected Attorney General of the State of Colorado and is charged under § 6-1-103, C.R.S. with enforcing the provisions of the CCPA.

3. Defendants General Steel and Capitol Steel are Colorado corporations, with their principal (and sole) place of business located at 1075 S. Yukon, Lakewood, Jefferson County, Colorado. General Steel is a broker/telemarketer that sells steel buildings manufactured by and purchased from manufacturers such as NCI Building System and Star Buildings. General Steel sales are made over the phone. Capitol Steel is a subsidiary of General Steel that offers builders the opportunity to erect steel buildings in exchange for promoting General Steel.

4. Defendant Jeffrey Wayne Knight is the President, Chief Executive Officer, and owner of General Steel and has held these positions since 1995. Knight formulates, controls, directs, supervises, manages, and has knowledge of and acquiesces in the practices and policies of General Steel to such a degree as to make him personally liable for the deceptive trade practices alleged herein. Defendant Knight was involved in the creation of the official sales script used by General Steel salespeople, which contains many of the sales misrepresentations outlined below. In addition, Defendant Knight knew or should have known of sales practices used by salespeople working on his and the company’s behalf. Knight has been involved in the management and operation of General Steel since its inception in 1995.

5. Defendant Kevin Neal Kissire has worked as a salesman, sales manager, and general manager for General Steel since March of 1998. Kissire formulates, controls, directs, supervises, manages, and has knowledge of and acquiesces in the practices and policies of General Steel to such a degree as to make him personally liable for the deceptive trade practices alleged herein. In addition, Defendant Kissire has personally engaged in the unlawful trade practices alleged herein. Defendant Kissire was involved in the creation of the official sales script used by General Steel salespeople, which contains many of the sales misrepresentations outlined below. In addition, Defendant Kissire knew or should have known of the sales practices used by salespeople working on his and the company’s behalf.

6. Defendant Bruce Graham has worked as a salesman and customer service manager for General Steel since 1996. Graham formulates, controls, directs, supervises, manages, and has knowledge of and acquiesces in the practices and policies of General Steel to such a degree as to make him personally liable for the unlawful trade practices alleged herein. In addition, Defendant Graham has personally engaged in the deceptive trade practices alleged herein. Defendant Graham was involved in the creation of the sales misrepresentations outlined below. In addition, Defendant Graham knew or should have known of the sales practices used by salesmen working on his and the company's behalf.

7. Defendant Jordan Blum is the manager of component sales for General Steel. Blum formulates, controls, directs, supervises, manages, and has knowledge of and acquiesces in the practices and policies of General Steel to such a degree as to make him personally liable for the deceptive trade practices alleged herein. Salespeople within component sales, including Blum and those under his control and direction, engage in unlawful practices similar to those of the building sales department, such as claiming that consumers can purchase doors and windows and other components at a reduced price because parts can be obtained from an already existing building.

8. Defendant Jeff Donelson has worked as a salesman for General Steel since 1999. He has personally engaged in the unlawful deceptive trade practices alleged herein. He knew, or should have known, that the sales representations he made were deceptive.

9. Whenever in this Complaint reference is made to any act of Defendant General Steel, such reference shall be deemed to mean the act of Defendant General Steel its officers, shareholders, directors, employees, agents, partners, or other representatives acting within the scope of their employment or authority.

10. Whenever in this Complaint reference is made to any act of Defendant Capitol Steel, such reference shall be deemed to mean the act of Defendant Capitol Steel, and its officers, shareholders, directors, employees, agents, partners, or other representatives, acting within the scope of their employment or authority.

#### JURISDICTION AND VENUE

11. Pursuant to § 6-1-110(1), C.R.S., this Court has jurisdiction to enter appropriate orders prior to and following a determination of liability.

12. Defendants maintain their offices and transact business in Lakewood, Jefferson County, Colorado. Therefore, venue is proper in Jefferson County, Colorado pursuant to § 6-1-103, C.R.S. and C.R.C.P. 98.

## PUBLIC INTEREST

13. Through their continuous unlawful, deceptive, and fraudulent business practices, Defendants have deceived, misled, and financially injured numerous consumers. Therefore, the Colorado Attorney General believes these legal proceedings to be in the public interest.

## STATEMENT OF FACTS

14. Defendants have engaged in the sale of steel buildings since 1997. They advertise nationally in newspapers, on television, radio, and the Internet, and by direct mail.

15. Consumers who telephone General Steel's toll-free number are connected with a General Steel salesperson. General Steel salespeople ("salespeople") are instructed to feign that they are not a salesperson. Instead, for example, the salespeople introduce themselves as "John Doe from shipping," or "John Doe from production."

16. General Steel salespeople are instructed to pretend as if the consumer's phone call has inexplicably been transferred to someone who does not normally handle sales. The salesperson, feigning as if he were with "production" or "shipping" or some other department within the company, explains that although "General Steel does not normally sell direct to the public," the salesperson is aware of some "clearance" buildings that were originally purchased by other buyers who have had to cancel their contracts. The salesperson then offers to "call down to the plant" or conduct some preliminary investigation to determine whether any of the "clearance" buildings remain.

17. During the initial sales call, the salesperson avoids answering a consumer's questions by claiming he does not normally handle sales and is, therefore, unable to answer consumers' questions. During this initial phone call, the salesperson obtains the building size the consumer wishes to purchase.

18. The salesperson returns to taking additional sales phone calls. Sometime later, the salesperson calls back the consumer and pretends that he has used the time to inquire about the supposed clearance buildings. The salesperson misrepresents to the consumer that "despite the fact many of the clearance buildings have been sold, a few [often as few as three] remain." Of the buildings listed by the salesperson as available, one is invariably the size, or at least very close to the size, of the building needed by the consumer.

19. The salesperson represents that this "clearance" building is available for a substantially discounted price, often as high as fifty percent or more. Salespeople regularly create misrepresentations to explain the "leftover" buildings

such as the building was purchased by some dot.com company that went bankrupt or that the building was originally one of twenty purchased by a large aircraft company that changed its delivery order at the last moment.

20. The salesperson creates a false sense of urgency by claiming that other consumers are considering buying the same clearance building desired by the caller. The salesperson implies or expressly represents that once these clearance buildings are gone, the consumer will lose the opportunity to buy a building at a discounted price. The salesperson claims the consumer risks losing the opportunity to purchase the building unless the consumer immediately places a deposit, “claim,” or “hold” on the building.

21. In fact, General Steel does not sell clearance buildings or existing buildings or ready-to-ship buildings, as it represents. General Steel customarily sells buildings that it orders from manufacturers of steel buildings only after General Steel secures a deposit on the building.

22. Salespeople are literally instructed to convey an attitude during the sales calls of “How should I know?” and “Why would I care?” Consistent with this training, salespeople are instructed to lead the consumer to believe that the salesperson is not in sales but rather an employee involved in the manufacture, production, or shipping of the steel buildings. As such, the salesperson can claim not to know the answer to common sales questions. In other words, the salesperson conveys a false lack of knowledge regarding sales thereby enabling a quicker, simpler sale and avoiding having to answer relevant consumer inquiries.

23. Consumers are led to believe that the person they are dealing with is from a department other than sales, does not normally handle sales calls, does not know the answers to common sales questions, and does not have a compelling financial interest in closing the sale. All of which are not true.

24. General Steel salespeople are paid on commission. Top selling salespeople such as Defendant Donelson have made more than three hundred thousand dollars in a year by such deceptive practices. Salespeople who do not meet established sales quota are terminated.

25. During the second call, consumers’ questions are either ignored, left unanswered or diverted, with the admonition that they had better quickly place a deposit or “claim” on the building or risk losing it to another consumer or “dealer” who has supposedly expressed interest in the building.

26. Consumers are told that their building can be “stored” free of charge for a year if they are unable to accept delivery before then. This representation, combined with others, leads consumers to believe they are purchasing an existing, ready-to-ship building, which is not true. Some consumers are eventually charged

storage fees, despite the fact that their building does not exist and/or has not yet been ordered.

27. Salespeople lead consumers to believe that they need only sign a purchase order and submit a deposit to secure or “claim” their building. Consumers who sign the purchase order and submit deposits are actually signing a contract with terms of which many consumers are unaware or which contradict oral contract terms.

28. Within the purchase order is an inflated “Original” purchase price for the building, sometimes accompanied by stamped terms such as “Factory Clearance,” “Approved,” “Manager,” and other stamps intended to lead the consumer to believe that the building price has been specially reduced.

29. Defendants promote an unnecessary sense of urgency to their sales transactions. They routinely fax the contracts to consumers, declining to mail the documents except as a last resort. The contract conditions are printed in small print (6-pt), often illegible through faxed copies. Some consumers complain that they never received important contract conditions contained on the reverse side of the original contract.

30. Among the terms on the reverse side of the contract is a clause requiring that any and all disputes be litigated in Colorado and only through arbitration. Another material term requires any consumer wishing to cancel the contract to pay sixty percent of the total building price.

31. Consumers also complain that their purchases have undisclosed costs. Consumers complain that they were unaware the purchased structure included only four walls and a roof. Doors, windows, gutters, or other necessary components are not included. Consumers complain that the component parts, *e.g.*, door and windows sold by General Steel, are not of the savings and quality represented.

32. Consumers are misled to believe through sales representations on the Internet, newspaper, by telephone, and direct mailing advertisements that General Steel is the manufacturer of the steel buildings. In fact General Steel has no production capabilities. Its one and only company facility is an office building located at the Lakewood, Colorado address and consists primarily of a telephone salesroom. General Steel does not own any manufacturing or fabrication plants, storage facilities, or component manufacturing facilities.

33. General Steel is not a member of any manufacturing or professional association of steel or metal building manufacturers.

34. Defendants, who are essentially a reseller of steel buildings, lead consumers to believe they have two choices. The consumer can purchase directly

from General Steel (represented by implication as the fabricator of the building) or may contract with one of General Steel's "dealers." Consumers are discouraged from buying from Defendants' dealers and instead are encouraged to "save money" by cutting out the middle-man/dealer by buying directly from Defendants (who are themselves a middleman).

35. Although General Steel's website invites consumers to "ask about our [General Steel's] dealers," the invitation is hollow and misleading. Defendants' mention of dealers is intended to lead the consumer to believe that General Steel is the manufacture of buildings who normally relies upon its dealers to sell buildings. In actual practice, salespeople discourage consumers who inquire about General Steel's dealers from purchasing a building at "dealers' cost" and instead encourage consumers to purchase the building directly from General Steel.

36. Despite representations by General Steel that the consumer is buying a building directly from General Steel, General Steel actually purchases steel buildings from out-of-state manufacturers such as, but not limited to, NCI Building Systems of Houston, Texas and Star Buildings of Oklahoma City, Oklahoma.

37. Consumers are led to believe that they are purchasing an existing, "on the ground," ready-to-ship, and ready-to-erect building directly from General Steel, the alleged manufacturer. Consumers are also led to believe they are buying "clearance" buildings at substantial savings. In fact, few clearance buildings actually exist, and most consumers are purchasing a building that has yet to be ordered, is not ready to ship, is not "on the ground," and is not ready to erect.

38. Defendants claim that they will perform any necessary engineering when, in fact, General Steel has no full-time certified engineers on staff. The actual manufacturers of the buildings perform any necessary engineering.

39. Defendants misrepresent the delivery time of buildings. One consumer, a church, waited over a year for delivery. One frustrated member of the church eventually flew to Houston, Texas to see their building and to attempt to arrange a speedier delivery of the building, which they were assured was "ready to ship." On arrival at the true manufacturer's place of business, they learned that their building had not been manufactured or even yet ordered by General Steel from the manufacturer, NCI Building Systems

40. Defendants misrepresent the cost and ease of erecting the buildings they sell.

41. General Steel's component salespeople engage in unlawful deceptive trade practices similar to those of the building salespeople. Component salespeople misrepresent that component parts are available from an existing building, *e.g.*, in a "town nearby." Salespeople represent that the building and its components have

become available because of such circumstances as “church didn’t get zoning approval,” or the “financing wasn’t approved,” or some other similar misrepresentation. Component salespeople create a false sense of urgency while misrepresenting the savings to be had from supposedly “clearance” component parts.

42. Consumers are pressured to buy component parts from General Steel by salespeople who falsely claim the building warranty will be void if parts are purchased from another source. Component parts quality is represented to consumers as “commercial quality” or “heavy duty” when, in fact, component parts sold by General Steel are the same or similar to those that a consumer can purchase at most home supply stores at substantially lower prices.

43. Component parts are sold at a large mark up, sometimes as high as 200 to 300 percent over Defendants’ costs. Component salespeople offer to provide consumers with a “dealer number” and falsely represent that the “dealer number” will place consumers in a special position and allow them to buy component parts at substantially discounted prices.

44. While selling components, Defendant Blum has represented himself, either expressly or by implication, to be an engineer. General Steel maintains an “engineering department” despite having no licensed engineers on staff to handle any engineering needs.

45. Component salespeople engage in the same general misrepresentation that component parts have become available from a building “in a nearby town” because the “zoning approval was denied” or the “purchaser has backed out.” Component salespeople create the same sense of urgency by claiming that another purchaser is hoping to purchase these “leftover,” “secondhand,” or “clearance” component parts. In fact, component parts are ordered from the true manufacturer after the sale is made.

46. As a result of Defendants’ deceptive trade practices, consumers in Colorado and throughout the United States have suffered financial injury.

#### FIRST CLAIM FOR RELIEF

(False representations as to characteristics, uses, benefits,  
or quantities of goods, or services)

47. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 46 of this Complaint.

48. Through the above-described conduct, Defendants have knowingly made false representations as to the characteristics, uses, benefits, or quantities of goods, food, services, or property, in violation of § 6-1-105(1)(e), C.R.S. (2003).



49. Through the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from numerous consumers throughout the United States.

SECOND CLAIM FOR RELIEF  
(Failure to disclose material information)

50. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 46 of this Complaint.

51. Through the above-described conduct undertaken by Defendants in the course of their business or occupation, Defendants have failed to disclose material information concerning goods, services, or property, which information was known at the time of an advertisement or sale. Defendants' failure to disclose such information was intended to induce consumers to enter into a transaction, in violation of § 6-1-105(1)(u), C.R.S. (2003).

52. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous consumers throughout the United States.

THIRD CLAIM FOR RELIEF  
(Knowing misrepresentations as to the source of goods)

53. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 46 of this Complaint.

54. Through the above-described conduct undertaken by Defendants in the course of their business, vocation, or occupation, Defendants have knowingly made false representations as to the source of goods in violation of § 6-1-105(1)(b), C.R.S. (2003). Specifically, Defendants misrepresent that they manufacture buildings and building components that are, in fact, manufactured by others.

55. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from, numerous consumers throughout the United States.

FOURTH CLAIM FOR RELIEF  
(False or misleading statements of fact concerning the price of goods and the reasons for, existence of, or amounts of price reduction).

56. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 46 of this Complaint.

57. Through the above-described conduct by Defendants in the course of their business, vocation, or occupation, Defendants have made false or misleading statements of fact concerning the price of the steel buildings they sell and the reasons for, existence of, or amounts of the price reduction in violation of § 6-1-105(1)(l), C.R.S. (2003). Specifically, Defendants misrepresent that buildings and their building components are reduced in price because the buildings are “clearance” buildings. Defendants misrepresent that the buildings for sale had been sold to, and manufactured for, another consumer but were never delivered to the previous consumer for a variety of reasons. Defendants also represent that consumers are receiving a price reduction because they are buying directly from the manufacturer when, in fact, they are not.

#### FIFTH CLAIM FOR RELIEF

(Failure to deliver to the customer at the time of an installment sale of goods a written contract setting forth all of the terms and conditions of the sale.)

58. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 46 of this Complaint.

59. Through the above-described conduct undertaken by Defendants in the course of their business, vocation, or occupation, Defendants have failed to set forth all of the terms and conditions of the sale in violation of § 6-1-105(1)(m), C.R.S. (2003).

60. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous consumers throughout the United States.

#### SIXTH CLAIM FOR RELIEF

(“Bait and Switch” advertising)

61. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 46 of this Complaint.

62. Through the above-described conduct undertaken by Defendants in the course of their business, vocation, or occupation, Defendants have employed “bait and switch” advertising in violation of § 6-1-105(n)(VI), C.R.S. (2003).

63. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from numerous consumers throughout the United States.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- A. An order declaring Defendants' above-described conduct to be in violation of § 6-1-105(1)(b), (e), (l), (m), (n)(IV), and (u), C.R.S. (2003);
- B. An order permanently enjoining Defendants and their successors, assigns, agents, officers, employees, independent contractors, servants, attorneys, and anyone else in active concert or participation with them who have notice of such injunctive orders, from engaging in any unlawful deceptive trade practice as described in and proscribed by the Colorado Consumer Protection Act, § 6-1-105, C.R.S. (2003), and as set forth in this Complaint;
- C. Appropriate orders necessary to prevent Defendants' continued or future use or employment of any deceptive or misleading advertisements, solicitations, or statements;
- D. An order pursuant to § 6-1-112(1) and 6-1-112(3), C.R.S. (2003), requiring Defendants to forfeit and pay to the General Fund of the State of Colorado maximum civil penalties for each deceptive trade practice engaged in by Defendants;
- E. Appropriate orders pursuant to § 6-1-110(1), C.R.S. (2003) necessary to completely compensate and restore money or property to consumers injured by Defendants' deceptive trade practices or which are necessary to prevent the unjust enrichment of Defendants through the use of deceptive trade practices;
- F. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General's office, including, but not limited to, Plaintiff's attorney fees and costs, pursuant to § 6-1-113(4), C.R.S. (2003); and
- G. Any such orders as this Court may deem just and proper to effectuate the purposes of the Colorado Consumer Protection Act.

Respectfully submitted this 29<sup>th</sup> day of September 2004.

KEN SALAZAR  
Attorney General

/s/ Andrew P. McCallin  
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Business Regulation Unit  
Consumer Protection Section

\*Counsel of Record

*In accordance with C.R.C.P. 121, § 1-26(9), a printed copy of this document with original signatures is being maintained by the above signed counsel and will be made available for inspection by other parties or the Court upon request.*

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within Amended Complaint upon all parties herein via electronic mail through Lexis/Nexis JusticeLink this 29<sup>th</sup> day of September 2004:

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